
**APPEALS BOARD
UTAH LABOR COMMISSION**

PETRITA FIERRO,

Petitioner,

vs.

**DUVAL HAWS & MOODY, P.C.
and WORKERS COMPENSATION
FUND,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 05-0324

Petrita Fierro asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge La Jeunesse's denial of benefits to Ms. Fierro under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Ms. Fierro claims workers' compensation benefits from Duval Haws & Moody, P.C. ("Duval") and its insurance carrier, Workers' Compensation Fund ("WCF"), for injuries to her back, neck, rib cage and wrists (carpal tunnel injuries) she allegedly sustained in an auto accident on August 4, 2004, while working for Duval. The parties stipulated to the facts, waived the hearing, and agreed to the referral of the medical aspects of the case to a medical panel. After the panel's report was filed, Ms. Fierro filed an objection to the report and asked that the panel consider several pages of medical records that were inadvertently omitted from the medical exhibit. Judge La Jeunesse denied Ms. Fierro's request, finding the material information in the omitted pages was already referenced in the record and appropriately considered by the panel according to its report. Judge La Jeunesse adopted the panel's opinion and denied benefits due to lack of medical causation.

In her motion for review, Ms. Fierro contends that the omitted medical records should be submitted to the panel so that it can make its decision based on the full record. Ms. Fierro also claims her attorney acted negligently and without her authority when he withdrew her claims for permanent partial disability compensation and mileage reimbursement in the stipulation; she asks that those claims be reinstated. Finally, Ms. Fierro asks to submit new evidence for the Appeals Board's consideration that she claims would prove she suffered injury. Duval filed a separate motion, joining with Ms. Fierro in her motion for review; WCF objected to Duval's motion.

FINDINGS OF FACT

The Appeals Board adopts Judge La Jeunesse's findings of fact taken from the parties' stipulation. The following facts, supplemented from the record, are relevant to the motion for review:

Ms. Fierro was running a work errand in her pickup truck on August 4, 2004, when the truck was hit from behind by another car as she waited at a red light. According to the stipulated facts, preliminary forensic analysis indicated the car that hit Ms. Fierro's truck was traveling at less than 10 miles an hour; Ms. Fierro has since disputed the accuracy of that report. Ms. Fierro received treatment from several medical providers for complaints of lower back, neck, and rib cage pain, and carpal tunnel related symptoms, including treatment with Dr. Muir, Dr. Stuart King and Dr. Valton King. Following a series of tests, Dr. Stuart King found Ms. Fierro's condition was caused by the auto accident. At WCF's request, Dr. Chung examined Ms. Fierro and found that Ms. Fierro may have initially suffered some mild sprain/strain over her neck and low back, but this should have long since resolved, probably within one to three weeks. He concluded that it was not medically probable that the auto accident caused Ms. Fierro any physical injuries.

The medical panel reviewed the medical records and the parties' fact stipulation and also examined and interviewed Ms. Fierro. The medical panel provided a detailed and well-reasoned medical report wherein it summarized the opinions of the various treating physicians and their respective treatments of Ms. Fierro. In particular, the report included three paragraphs detailing Dr. Stuart King's and Dr. Valton King's opinions and treatments of Ms. Fierro. The panel noted some of Dr. Stuart King's notes were omitted. Based on its review of all the medical opinions and its own observations and examination of Ms. Fierro, the panel concluded that Ms. Fierro suffered no neck, lower back, rib cage, or carpal tunnel problems as a result of the auto accident.

After receiving the panel's report, Ms. Fierro objected to the report based on the omission of one page of Dr. Stuart King's medical notes and three pages of test results that indicated Dr. Stuart King's impression of mild L5-S1 radiculopathy. The missing note, dated August 11, 2005, indicated "she will have residual impairment and most likely will have chronic pain in her neck and back for the rest of her life. She will most likely need some ongoing physician coverage and medications."

DISCUSSION AND CONCLUSION OF LAW

Section 34A-2-401 of the Utah Workers' Compensation Act provides benefits to an employee injured "by accident arising out of and in the course of the employee's employment." To qualify for benefits under the foregoing standard, an injured worker must establish that his or her work was both the "medical cause" and the "legal cause" of the injury. See Allen v. Industrial Commission, 729 P.2d 15, 25 (Utah 1986). Judge La Jeunesse adopted the panel's report and found that the August 4, 2004, accident did not medically cause Ms. Fierro's medical conditions.

In her motion for review, Ms. Fierro asks the Appeals Board to submit the four omitted pages of Dr. Stuart King's medical records to the medical panel. However, Ms. Fierro does not argue that these documents would change the panel's ultimate finding on medical causation. She makes the

request in order to show conclusively that she sought treatment from Dr. Stuart King and Dr. Valton King. The Appeals Board notes, first, that a review of the panel's report shows that the panel was aware of Dr. Stuart King's and Dr. Valton King's treatments and opinions and, in fact, the panel summarized this in detail. Second, Ms. Fierro does not argue that a review of the omitted documents would provide any new medical evidence that would change the panel's opinion. For these reasons the Appeals Board concludes that Ms. Fierro has not shown good cause for reopening the evidentiary record and denies her request.

Next, Ms. Fierro recounted inadequacies and deficiencies in her attorney's conduct while he represented her. However, the Appeals Board finds that none of the claimed negligence has any relevance to the threshold issue for which this case was dismissed—the issue of medical causation. The medical panel, consisting of two impartial specialists who reviewed Ms. Fierro's medical history and her medical records and who examined Ms. Fierro, provided a well-reasoned and detailed report wherein the panel concluded the accident did not medically cause Ms. Fierro's injuries. The Appeals Board finds this report persuasive. Thus, regardless of Ms. Fierro's claim of her attorney's incompetence, this would not change the Appeal Board's finding that her claim lacked the necessary element of medical causation. Without medical causation, the Appeals Board notes there can be no award for any workers' compensation benefits, including Ms. Fierro's claims for permanent partial disability and travel reimbursement. Therefore, the Appeals Board finds it unnecessary to look at Ms. Fierro's remaining arguments on those issues or the factual stipulation that withdrew those claims. Similarly, as no benefits are awarded, the Appeals Board does not review WCF's objection to Duval's joint motion for review.

The Appeals Board further notes Ms. Fierro's request to submit more evidence to support her claim for benefits. However, the evidentiary record has been closed and, after reviewing these documents, the Appeals Board does not find that they offer any relevance to the threshold issue of medical causation either. For the foregoing reasons, the Appeals Board finds Ms. Fierro failed to show good cause for disturbing the evidentiary record and denies Ms. Fierro's request.

In summary, the Appeals Board concurs with Judge La Jeunesse's reasoning in denying Ms. Fierro's request to submit omitted medical records to the medical panel. The Appeals Board affirms Judge La Jeunesse's finding that there was no medical causation and his dismissal of Ms. Fierro's claim.

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ORDER

The Appeals Board affirms Judge La Jeunesse's decision. It is so ordered.

Dated this 21st day of January, 2009.

Colleen S. Colton, Chair

Patricia S. Drawe

Joseph E. Hatch

NOTICE OF APPEAL RIGHTS

Any party may ask the Appeals Board of the Utah Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Appeals Board within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.

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